

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
Respondent,)	
)	
v.)	C.A. No. 0801020076
)	
NANCY J. MILLER,)	
)	
Petitioner.)	

Submitted: May 7, 2009
Decided: June 10, 2009

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ON DEFENDANT'S MOTION TO SUPPRESS

Defendant Nancy J. Miller (hereinafter, "Miller") brings this motion pursuant to Court of Common Pleas *Civil Rule 12(b)* to suppress all item seized on defendant's property pursuant to a search while executed on or about January 14, 2008 by the New Castle County Inspectors. The Court conducted a hearing on defendant's motion February 25, 2009. The County initially indicated it did not oppose the motion to suppress. During the course of the County's presentation, the Court concluded that written submissions would assist in an orderly disposition of defendant's motion to

suppress, and the parties were given leave to submit written arguments setting forth their positions.

Defendant Miller is charged with eight (8) counts of violating the New Castle County Property Maintenance Code. It is alleged that these offenses occurred on January 15, 2008. The defendant was initially convicted for these offenses in the Justice of the Peace Court No. 11, on June 23, 2008. The defendant was sentenced on June 23, 2008 for the offenses and in each case the Court imposed fines, costs, restitution, and additional assessments, totaling \$1,191.00. Thereafter, the defendant Miller entered into a payment arrangement to discharge the fine, in monthly installments of \$25.00 beginning July 23, 2008. On June 25, 2008 Miller appealed to this Court pursuant to, *11 Del. C. § 5917(b)*.

The State alleged the defendant in Case No. 0801020076 being the owner of property located at 26 Mercer Drive, Brookside, Delaware, violated the New Castle County Maintenance Property Code; by having broken windows covered with duck tape; ripped screens; and exterior of the dwelling not in good repair, in that there were broken glass, ripped screens, deteriorated frames, deteriorated siding, and peeling paint. It is also alleged a utility closet on the car port was being used for sleeping quarters. The State alleged that the violations in Case No. 0801020776 occurred on or about November 23, 2007, and Miller was given proper notice and she failed to correct the violations after notice.

The State alleged in Case No. 0801019997, that defendant Miller, being the owner of property located at 26 Mercer Drive, Brookside in New Castle County, State of

Delaware, violated the New Castle County Property Maintenance Code. It is alleged that the violation consists of outside storage of debris of various household items such as futon, television set, bookshelves, stereo, computer monitor, trash bags, and other litter. The State alleges that the defendant was given notice of the violations and failed to correct the violations within the time specified by the County. The State alleged as a result of an inspection, the violations took place on November 23, 2007 in Case No. 0801019997.

Miller moves to suppress the items seized and videotapes made as a result of an inspection of her property on January 14, 2008. It is Miller's contention that the search warrant issued by the Justice of the Peace Court and executed on her property must fail because the affidavit does contain adequate facts for a finding of probable cause by the Magistrate to issue the search warrant. Miller alleges that the probable cause is insufficient because:

(a) the affidavit relies upon search warrants previously executed on November 5, 2007 and December 6, 2007, and that the probable cause contained in such search warrant is too remote in time to support a finding of probable cause for present search warrant in question;

(b) the warrant application is based solely upon conjecture and that it contains no facts which allege illegal activity by the defendant at 26 Mercer Drive;

(c) the affidavit fails to identify when the alleged observation of the violations took place;

(d) the reference to the alleged calls by citizens does not specify when the calls were made and by whom the calls were made;

(e) the affidavit fails to provide any link between any of the alleged observations and probable cause to believe that at the time of the application of the search warrant illegal activity was occurring on the property;

(f) the search warrant refers to observation made during the execution of a search warrant executed on December 7, 2007, which is stale;

(g) the affidavit makes conclusionary statement that the affiant has knowledge that very little, if any, work has been done to bring the property into compliance from what can be viewed from the street. The affiant does not state with reasonable certainty the violations continue to exist. The affiant fails to indicate the basis of her knowledge for which she concludes that little, if any work was done on the property; and

(h) the affiant indicates that she had knowledge that the property owners had not been cooperative in allowing access to the property and reasons that the property owner would not give voluntary consent to inspect the property.

The Delaware Constitution provides that a search warrant may be issued only upon a showing of probable cause. The Constitutional requirement for search is codified in *Section 2306* and *Section 2307* in Title 11 of the Delaware Code. *Section 2306* provides:

An application for a search warrant must state “that the component suspects that such persons or things are concealed in the house, place, conveyance, or person designated in the search warrant application and shall recite the facts upon which such suspicion is founded.”

Section 2307 provides that a warrant may issue only upon a judicial determination of probable cause.

On a motion to suppress, challenging the validity of the warrant, the defendant bears the burden of establishing that the challenged search warrant or seizure was unlawful. Miller argues that the warrant authorizing the search of her residence is not supported by probable cause. It is her burden to establish by a preponderance of the evidence that she is entitled to relief on that basis.

It is settled law in this jurisdiction that when the Court is confronted with a motion to suppress the warrant, it must employ “a four-corner test” to determine whether an application for a warrant demonstrates or contains facts which support probable cause. Under this test, sufficient facts must appear on the face of the affidavit so that a reviewing court can glean from that document alone the factual basis for a determination that probable cause exists. Stated differently, the supporting affidavit must set forth sufficient facts on its face “for a judicial officer to form a reasonable belief that an offense has been committed, and that seizable property would be found in a particular place to support a finding of probable cause.” This test however, is less rigorous than that governing the admission of evidence at trial and requires only that a probability and not a *prima facie* showing of criminal activity be established. Moreover, great deference must be given by the reviewing Court to the determination of a judge who has made a finding of probable cause to issue a search warrant. *State v. Sisson*, Del. Super., 883 A.2d, 868 (2005).

The search warrant which is challenged in these proceedings was issued on January 14, 2008. The affidavit provided by the "Code Enforcement Officer" outlines that the property in question, 26 Mercer Drive, had a previous history of code violations. It indicated that a previous search warrant had been executed for the property on October 30, 2007, November 5, 2007, where the affiant had observed numerous exterior property code violations. The affidavit further states that violation notices were issued and the property was not in compliance on December 1, 2007, that a search warrant was executed on December 7, 2007. Thereafter, the affidavit indicates at Item #12 that the affiant has knowledge that very little, if any, work has been done on the property to bring it into compliance from what can be viewed from the street. The affidavit further indicates that the affiant therefore reasonably believe the violation continued to exist behind tarps, fencing, under the car port, and within certain accessory structures on the property.

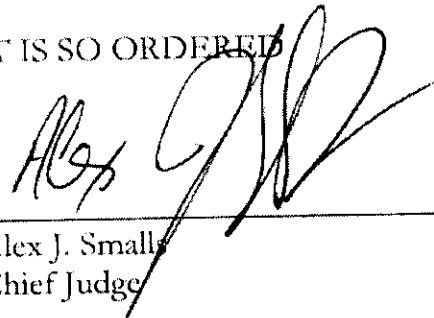
Relying on this information, the Justice of the Peace Court issued a search warrant on January 14, 2008 for which New Castle County as an agent of the State of Delaware conducted a search of the property and made a videotape of the alleged violation, and took photographs. It is these items that Miller seeks to suppress on the basis that the search warrant lacked probable cause.

As stated above, when determining whether probable cause exists to obtain a search warrant, the Court must apply a "totality of the circumstances" test. In this instance, the Code Enforcement Officer indicated in the affidavit that there were property violations on December 7, 2007 and that as of the date of this application,

January 14, 2008, the affiant has knowledge that very little if any work has been done to the property to bring it into compliance based upon what can be viewed from the street. The affidavit also states the affiant is able to view the property from the street and based on that observation, the code violations continue to exist. This is not a case where the subject of the warrant is readily movable or hidden from view, the nature of these conditions are readily apparent. The affidavit of probable cause also indicates the violations continue to exist as of the date of the search warrant application.

The facts contained in the affidavit are sufficient to support a finding of probable cause to issue the warrant. Accordingly, defendant's Motion to Suppress is hereby DENIED.

IT IS SO ORDERED



Alex J. Smalls
Chief Judge

Miller-OP Jun 09